

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

| | |
|---|--|
| IN RE: AQUEOUS FILM- FORMING FOAMS PRODUCTS LIABILITY LITIGATION | MDL No. 2:18-mn-2873-RMG ORDER |
|---|--|

The Court and counsel discussed at length at the November 1, 2024 status conference the challenges associated with establishing product identification at sites contaminated with AFFF. Counsel identified a number of possible sources of information that could assist in making product identification (or the absence thereof) at designated sites contaminated with AFFF. As indicated in the parties' most recent Joint Status Report, the issue of product identification heavily impacts water district claims against non-settling Telomer Defendants, personal injury claims, soil contamination claims, and sovereign state claims. To date, Plaintiffs have been limited in their ability to systematically conduct discovery on product identification because of a stay in discovery for claims outside of the proposed bellwether cases.

The time for a systematic investigation of product identification at sites contaminated with AFFF has now arrived. From a practical standpoint, a comprehensive investigation the numerous alleged contaminated sites is neither realistic nor necessary. Instead, the parties need to identify a representative pool of sites in which focused product identification discovery can be conducted. This pool should be large enough so that the results will be respected by the parties and not so large that the parties are unnecessarily overburdened. Designating 15 contaminated sites for this focused discovery should be appropriate.

The parties are directed to meet and confer about a new CMO relating to product identification that includes a proposed pool of representative sites in which focused product identification discovery can be conducted. The parties are directed to provide the Court a proposed

CMO on product identification discovery within 60 days of this order. The CMO should include a listing of the contaminated sites to be investigated in discovery and a deadline for completing the work. Six months from the designation of the sites should be sufficient to conduct focused discovery under this new CMO. Once the discovery is completed, the CMO should designate a date by which the parties are to report their findings and conclusions regarding product identification to the Court. The parties may make a joint report or separate reports, whichever is their preference.

If the parties cannot agree on the specifics of a product identification CMO, separate proposed CMO's should be presented to the Court within 60 days. The Court will, as always, make the final determination of the elements of the CMO and its deadlines.

AND IT IS SO ORDERED

s/ Richard Mark Gergel
Richard M. Gergel
United States District Judge

November 4, 2024
Charleston, South Carolina